

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

JOHN TROTTER,

Petitioner,

V.

DAVID L. WINN, Warden,

Respondent.

Civil Action No. 04-40118-MLW

**RESPONDENT'S MOTION TO DISMISS**

Respondent, David L. Winn, Warden, Federal Medical Center, Devens, hereby moves to dismiss this action pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief can be granted. The reasons for the foregoing motion are set forth in the accompanying Memorandum of Law and supporting declaration.

Respectfully submitted,

MICHAEL J. SULLIVAN  
United States Attorney

By: /s/ Michael Sady

Michael Sady  
Assistant United States Attorney  
United States Attorney's Office  
John Joseph Moakley U.S. Courthouse  
1 Courthouse Way, Suite 9200  
Boston, MA 02210  
617-748-3100

Dated: October 25, 2004

CERTIFICATE OF SERVICE PURSUANT TO LOCAL RULE 7.1(a)(2)

Because Local Rule 7.1(a)(2) requires counsel to confer, and petitioner is proceeding pro se and is incarcerated, counsel has not contacted petitioner for his position on this motion

/s/ Michael Sady  
Michael Sady  
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

This is to certify that I have this day served upon the person listed below a copy of the foregoing Memorandum of Law in Support of Respondent's Motion to Dismiss, and the accompanying Declaration of Stephanie Scannell, by depositing in the United States mail a copy of same in an envelope bearing sufficient postage for delivery:

John Trotter  
Reg No, 04234-015  
FMC - Devens  
P.O. Box 879  
Ayer, MA 01432

This 25<sup>th</sup> day of October, 2004

/s/ Michael Sady  
Michael Sady  
Assistant U.S. Attorney